

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.9609 OF 2005

03.3.2006

Between:

Mohd. Moosa, S/o.late Mohd.Gouse

And others

... Petitioners

AND

Union of India, represented by its Secretary,

Ministry of Railways, Rail Bhavan, New Delhi

And others

... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

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ORDER:

The three petitioners are residents of Visakhapatnam city. They are iron scrap dealers having dealings with Indian Railways, Bharat Heavy Plates and Vessels, Hindustan Petroleum Corporation Limited, Visakhapatnam Port Trust and such other organizations. They allege that as and when the second respondent is conducting auction for disposing iron scrap, though they are qualified, the petitioners are not being permitted to participate in the auction. They also further allege that whenever the petitioners obtained necessary tender documents and are present at the time of auction, they are prevented from entering the auction-hall, though they did not incur any disqualification, as per the condition of the tender.

A counter affidavit is filed by the Assistant Security Commissioner, Railway Protection Force, Visakhapatnam on behalf of respondents 2, 3 and 6. It is stated that so as to ensure transparency and eliminate mafia and syndicate persons, who are terrorizing the genuine bidders, respondents 2 to 4 have taken a policy decision not to allow unscrupulous, ungenuine and fictitious persons and firms having

criminal record, and accordingly such persons are restrained from participating in the auction of scrap materials of East Coast Railway. The respondents also allege that the petitioners are involved in committing theft of railway property and, therefore, they were restrained from participating in the auction of iron scrap. A reference is also made by the answering respondent to the orders passed by the second respondent on 20.12.2004 not to allow unscrupulous bidders with previous record of theft. Insofar as the first petitioner is concerned, an averment is made that the first petitioner is involved in Crime No.5 of 1985 under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966 (the Act, for brevity) and that he was convicted and sentenced to suffer rigorous imprisonment for a period of two years. Therefore, the first petitioner cannot be allowed to participate in the auction. It is also alleged that one V.Satyanarayana was involved in Crime Nos.41 of 2003, 45 of 2003, 12 of 2004 and 23 of 2004 under Section 3(a) of the Act and, therefore, said Satyanarayana, none other than the second petitioner cannot be permitted to participate in the auction.

A reply affidavit is filed on behalf of the petitioners denying all counter averments. It is further stated that the first petitioner was convicted in C.C.No.207 of 1985 by the Railway Magistrate, Visakhapatnam and that on appeal being Criminal Appeal No.17 of 1989, the Court of District and Sessions Judge, Visakhapatnam, set aside the conviction. It is also stated that on 13.7.2005, the first petitioner was arrested in connection with Crime No.4 of 2005 of V.Z.M.R.P.F. post and on the next day he was released on bail. All other allegations are denied.

It is not denied before this Court that petitioners are neither blacklisted nor incurred any disqualification to participate in the auction being conducted by the second respondent at different places for disposal of iron scrap. In purported implementation of policy not to allow unscrupulous persons to participate in the auction, the petitioners were denied to participate in the auction. It is not even the case of the respondents that the petitioners are unscrupulous persons. Except alleging that there are attempts by some persons to form syndicate, no supporting material is placed before the Court. On such vague allegations, without there being any finding by a competent authority, the petitioners cannot be denied opportunity to participate in the auction. It is well settled that there is no requirement for public authority to call for tenders while dealing with works or services, but when once the public authority decides to procure goods and services by inviting tenders, all eligible persons are entitled to have an equal opportunity to participate in the auction. This right, however, does not entitle a tenderer or a participant in the auction to compel the public authority to deal with him while procuring goods or services. But, denial of opportunity to the petitioners cannot be sustained. If the auctioning authority ultimately finds that by reason of a formation of cartel or syndicate, public interest is put to jeopardy, it is always open to cancel the auction for valid reasons.

The writ petition, subject to the above observations, is accordingly disposed of, directing the respondents to allow the petitioners to participate in the auction for disposing of iron scrap conducted by the respondents. There shall be no order as to costs.

(V.V.S.RAO, J)

March 03, 2006

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